

Ofcom Content Sanctions Committee

Consideration of Sanction against	BLOOMBERG LP
For	Breaches of Section 3.3 (Programme Content: Major matter – Due Impartiality) of Ofcom’s Programme Code (ex-ITC)
On	28 April 2005
Decision	A Direction to transmit Ofcom’s statement of finding on three consecutive days at 11:00

Summary

For the reasons set out in full in the Decision, the Ofcom Content Sanctions Committee found as follows:

- (1) Bloomberg LP is licensed by Ofcom to run the service known as Bloomberg Television (“Bloomberg TV”).
- (2) On 28 April 2005, during the UK General Election, Bloomberg TV broadcast live coverage of the Labour Party launch of its ‘Business Manifesto’ from Bloomberg’s London auditorium. This was followed by long interviews with the Labour Party leader, Tony Blair, and two other senior members of the party.
- (3) Three viewers complained that Bloomberg had not been duly impartial because no equivalent coverage was given to any other political party during the General Election campaign.
- (4) Bloomberg TV argued that the coverage was not uncritical and that Tony Blair faced some hostile questioning from the press and invited audience. The licensee also said that representatives of the opposition parties were invited to the event by Bloomberg TV but declined the invitation.
- (5) Ofcom found that the Labour Party had been given an extended opportunity to present its policies through both a manifesto launch and interviews. However, no such coverage, at any time throughout the election campaign, was given to any of the other major political parties. Ofcom therefore recorded against Bloomberg TV a breach of Section 3.3 of Ofcom’s (ex-ITC) Programme Code (“the Code”) – the requirement to maintain due impartiality on “major matters” of political controversy. This requirement for due impartiality is particularly important at times of elections. The breach was therefore considered serious enough to be referred to the Content Sanctions Committee (“the Committee”) for consideration of a statutory sanction.
- (6) The Committee considered all the relevant material, including the matters which Ofcom had raised in correspondence with Bloomberg TV, and the

licensee's written representations in response, before deciding whether to impose a sanction and, if so, what level of sanction was appropriate.

- (7) Ofcom has a statutory duty to require compliance with its Code and consider the imposition of a statutory sanction where a broadcaster has "repeatedly, deliberately or seriously" breached the Code. The Committee viewed the Code breach as sufficiently serious to merit the imposition of a statutory sanction.
- (8) The Committee took into account Bloomberg TV's good compliance record. It noted the licensee's representation that this was not a deliberate breach of the Code and considered that the breach did not result from political bias. However, the Committee was surprised and concerned that Bloomberg TV appeared at times to continue to defend its position that it may not have breached the Code. Bloomberg is an experienced and well-established broadcaster in the field of news and business. Throughout its coverage of the election, Bloomberg TV had not covered, in a similar context, any other press conference, let alone a manifesto launch, in full with accompanying lengthy interviews with party leaders. This resulted in a service that had not maintained due impartiality for the period of the election.
- (9) Taking all relevant factors into account, the Committee considered that a proportionate and appropriate sanction in this case was to direct Bloomberg TV to broadcast a statement of Ofcom's finding on three consecutive days at 11:00 in a manner and form to be determined by Ofcom.

Background

1. Bloomberg LP is licensed by Ofcom to provide the service known as Bloomberg Television. The licence obliges Bloomberg TV to comply with the Code. The Code requires that broadcasters maintain "due impartiality" on matters of political controversy and, in particular, on "major matters" (such as general elections). Section 3.3 of the Code (Major Matters – Due Impartiality)¹ states that:

"The Act [1990 Broadcasting Act] requires the Code to take particular account of the impartiality due to major matters of political or industrial controversy or relating to current public policy. What is a major matter will vary according to the current public and political agenda, whether national or regional. It would in most circumstances include political or industrial issues of national importance...In dealing with major matters of controversy, licensees must ensure that justice is done to a full range of significant views and perspectives during the period in which the controversy is active. The treatment of major matters should not obscure the fact that due impartiality is required on all matters of political or industrial controversy or current public policy."
2. On 28 April 2005, during the UK General Election, Bloomberg TV broadcast live coverage of the Labour Party launch of its 'Business Manifesto'. The event was staged in Bloomberg's own London conference facility. Coverage

¹ The Code in force at the time the material was transmitted (28 April 2005) was the ex-Independent Television Commission Programme Code. This was adopted by Ofcom under the transitional arrangement under Schedule 18 of the Communications Act 2003. The Programme Code was drafted in light of the Broadcasting Act 1990. It should be noted, however, that the requirements regarding "due impartiality" and "major matters" were retained in the Communications Act 2003 and Ofcom's new Broadcasting Code which came in to force on 25 July 2005.

of the event featured the entire Labour Party press conference. This was followed by long interviews with the Labour Party leader Tony Blair, Gordon Brown and Patricia Hewitt. There were no other significant interviews or coverage of other major political parties on the day. There was also no equivalent coverage of Conservative or Liberal Democrat press conferences or launches at any stage during the General Election campaign.

3. Three viewers complained that Bloomberg had not been duly impartial because no equivalent coverage of the General Election campaign was given to any other political party.
4. Following receipt of the complaints Ofcom requested a response from Bloomberg TV. The broadcaster said that the coverage given to the Labour press conference was not uncritical, and that Tony Blair had faced some hostile questioning from the press and an invited audience. The licensee also said that representatives of the opposition parties were invited to attend the event and be interviewed, but had declined the invitation.
5. As far as more general coverage of the election was concerned, the licensee said each major party had been offered the use of Bloomberg's London auditorium to hold a launch event during the campaign. Only the Labour Party had accepted the invitation. Had the other parties accepted, they would have been accorded similar coverage. Bloomberg Television submitted correspondence confirming that equivalent facilities were offered to the Conservative and Liberal Democrat parties.
6. The licensee stated that the launch of the Labour Party "Business Manifesto" had become so extensive because it became a news event of broader significance, as a result of the press and public attention on the Iraq war. Bloomberg TV argued that it not would have been serving its viewers if it had not broadcast the question and answer session. Furthermore the tough questioning in that session represented a counterpoint in itself to many of the views expressed by the Labour leadership.
7. Bloomberg TV maintained it had an underlying commitment to impartiality. However, the broadcaster stated that it was somewhat confused by Ofcom's interpretation of the Code since the Code states that in achieving due impartiality broadcasters do not have to ensure that equal time is given to each opposing view.

Code Breach

8. In recording a breach of section 3.3 of the Code, Ofcom accepted that Bloomberg TV was not deliberately biased in its coverage, and that efforts were made to offer opportunities for exposure to all the main rival political parties. However, judgement on a channel's due impartiality can only be made on the basis of what is actually transmitted. The principles of due impartiality and of the rules governing "Programme Content: Major Matters" (Section 3.3) are important and never more so at the time of a general election. On this occasion, the Labour Party was given an extended opportunity to present its policies, and rebut critical questions. No such coverage was given to the other major parties at any time during the election campaign.
9. It is the case that, in accordance with the Code, due impartiality can be achieved over a period, for instance a general election period. Furthermore, due impartiality does not mean that balance is required in any simple mathematical sense. However, Bloomberg TV had failed to provide any

evidence that any equivalent coverage had been given to other political parties. It appeared to Ofcom that, overall, the licensee's judgement in relation to due impartiality was too dependent on whether or not political parties had taken up Bloomberg TV's offer to use its facilities – with the result that this impinged on the licensee's ability to maintain due impartiality. Ofcom noted that this was during an election period where, away from Bloomberg's auditorium, both the Conservative Party and the Liberal Democrats were hosting numerous press conferences. These were events open to all media.

10. During the General Election, Ofcom's Election Committee was formed to consider swiftly issues concerning the allocation of Party Election Broadcasts and the application of impartiality rules during the Election campaign period. Under normal circumstances, the Election Committee, in accordance with Ofcom's statutory duties, would have considered the case and directed Bloomberg TV to redress the imbalance in its coverage within the time remaining in the campaign, for instance by requiring Bloomberg to cover other appropriate political parties in a similar manner to ensure due impartiality was maintained. However on this occasion, following the Bank Holiday (2 May 2005), there were only two working days left before the day of the General Election. In these circumstances, such a direction would not have been appropriate or possible.
11. Ofcom accordingly found Bloomberg TV in breach of section 3.3 of the Code and referred the matter for consideration to the Content Sanctions Committee. The Committee met on Wednesday 16 November 2005 to consider the matter and the written representations made by Bloomberg TV in relation to the possible imposition of sanction(s) for breaching the Code.

Sanctions Decision

12. In reaching a decision about whether to sanction, and if so at what level, the Committee took into account Bloomberg TV's written representations including that if a Code breach had occurred then it was not sufficiently serious to merit any sanction, and that a "private reprimand" would be more appropriate. The Committee also noted Bloomberg's representation that this was not a deliberate act and that it had a commitment to impartiality.
13. However, the Committee considered the breach of the Code was clear and sufficiently serious to merit the imposition of a sanction. The Code requires broadcasters to achieve due impartiality in particular in "major matters" of political controversy. There is no doubt that a UK general election is considered to be a major matter and broadcasters must therefore ensure that "...justice is done to the full range of significant views...". The Committee was therefore surprised and concerned that Bloomberg TV appeared at times to continue to defend its position that it may not have breached the Code. Bloomberg is an experienced and well-established broadcaster in the field of news and business. Throughout its coverage of the election, Bloomberg TV had not covered, in a similar context, any other press conference, let alone a manifesto launch in full with accompanying lengthy interviews with political party leaders. This resulted in a service that had not maintained due impartiality for the period of the election. The rules on due impartiality do not mean that 'balance' is required in any simple mathematical sense or that equal time must be given to each opposing point of view. However, such

extensive coverage of one political party in isolation is problematic in terms of achieving due impartiality in a broadcast service during an election period.

14. The Committee took into account Bloomberg TV's overall good compliance record, that it is a niche channel watched mainly by the business community, and that it is unlikely to be seen widely outside this specialised audience. The Committee also considered that the breach occurred from a surprisingly poor understanding of the Code and was not deliberate non-compliance or political bias. It also believed that the licensee is unlikely to breach this requirement again.
15. For clearly and seriously breaching section 3.3 of the Code by failing to maintain due impartiality, on a major matter, on its licensed service Bloomberg TV and taking all the relevant considerations into account, the Committee has determined that a sanction by way of Direction to broadcast a summary of Ofcom's statement of finding, on three consecutive days at 11:00, in a manner and form determined by Ofcom is appropriate and necessary.

Content Sanctions Committee

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25 November 2005